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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

NANETTE FILOMENA A. ALFORQUE,

Plaintiff - Appellant,

v.

U.S. CUSTOMS SERVICE,

Defendant - Appellee.

No. 02-55707

D.C. No. CV-00-01301-FMC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Argued and Submitted July 8, 2003
Pasadena, California

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

The Customs Service presented overwhelming evidence that it had a non-discriminatory reason for terminating Nanette Alforque's employment -- her deficient performance -- and Alforque did not provide specific, substantial

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evidence demonstrating that this proffered explanation was unworthy of credence. *See Raad v. Fairbanks North Star Borough School Dist.*, 323 F.3d 1185, 1194 (9th Cir. 2003) (citation omitted).

Complaints that Alforque made to union representatives before she was fired could not be portrayed as opposition to discriminatory employment practices. Instead, they were run-of-the-mill employment disputes that Alforque tried to recast as complaints about unequal treatment and discrimination. Thus, Alforque could not demonstrate that the Customs Service's decision to terminate her employment was in retaliation for her participation in a protected activity. *See Villiarimo v. Aloha Island Air Inc.*, 281 F.3d 1054, 1064 (9th Cir. 2002).

The other probationary employees working with Alforque committed markedly fewer errors and their performances improved throughout their probationary periods. The records documenting these performances were destroyed, thus hampering Alforque's ability to demonstrate that similarly situated employees with comparable error rates were nevertheless retained. However, nothing in the record indicates that this destruction was done in bad faith. Additionally, Alforque did not utilize the discovery process in order to obtain her hypothetically inculpatory evidence by any other method. Consequently, Alforque has failed to create a triable issue of fact regarding the other probationary

employees' performances. *See Chuang v. U.C. Board of Trustees*, 225 F.3d 1115, 1127 (9th Cir. 2000).

AFFIRMED.